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EXAMINER

ROBINSON, GRETA LEE

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,795

Applicant(s)

CRASWELL ET AL.

Examiner

Greta L. Robinson

Art Unit

2169

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 12, 2009 has been entered.
2. Claims 1-3, 5-17 and 19 are pending in the present application.
3. Claims 1, 3, 5, 9, 10, 11, 12, 16, 17 and 19 have been amended. Claims 4 and 18 have status cancelled.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-3, 5-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutta et al. US Patent Application Publication No. 2002/0156921 A1 in view of Andersen US Patent 6,865,655 B1 and Ramasubramani et al. US Patent 6,516,316 B1.

Regarding claim 1, **Dutta et al.** teaches *a wireless communication apparatus* [note: Figures 1, 3, and 5 ; paragraph 0017 a cellular wireless network 112] having *a processor* [note: paragraph 0033 processors 202 and 204]; and *a memory* comprising executable instructions which, when executed are operative to [note: paragraph 0033];
facilitate *login*, by a user, to *a user account* at a backup server, the user account being accessible from the wireless communication apparatus as well as another computing device of the user [note: paragraph 0007 wireless device pushes request to client via proxy/gateway server; paragraph 0017-0020 IP network system requests IP address based on uniform resource locator and connects via proxy server 106 or

another connection; also note firewall configuration; gateway 114 paragraph 0022; paragraph 0023 wireless application protocol (WAP); Figure 4];

facilitate designation of data on the wireless computing apparatus *to backup* [note: paragraph 0043; Figure 5 requesting backup];

generate a *hash value* for said data [note: application identified by SL paragraph 0045-0046];

communicate said hash value to the *backup server* to enable said backup server to determine whether said data is already available to said backup server or not [note: Figure 7]; and

only if said backup server determines that said data is not already available to said backup server, *send said data* to said backup server the backup server being configured to store the data, to associate the data with said user account and to provide the data to the another computing device [note: paragraph 0022; paragraph 0023-0024 wireless application protocol (WAP) defines the protocol; paragraph 0027 special protocols; paragraph 0031 Data Backup Server 170 provides backup for wireless devices such as PDAs; paragraph 0046 sends data to backup server; backup may be predefined paragraph 0043].

Although Dutta et al. teaches the invention substantially as cited above, they do not explicitly teach backup only if data is not already available and that the identifier is a hash value; however they do teach predefined conditions for backup.

Andersen teaches determining if there is a data portion for backup and a mechanism for transferring a contents for backup if the system does not already have a

copy. Anderson teaches recognition of the contents through a hash value or other unique identifier that identifies the contents to be evaluated [see: abstract; column 16 lines 48-57 "the identification 194 may be, for example, a hash value, checksum or other unique identifier"]. It would have been obvious to one of ordinary skill at the time of the invention to have combined Andersen with Dutta et al. because identifiers provide access or indexing ability to data for processing, and special identifiers would provide a more enhanced or customized approach to identifying data for storage.

Dutta and Anderson do not *explicitly* teach a login; however Dutta does teach a proxy/gateway as part of wireless device or PC access to the system. **Ramasubramani et al.** specifically teaches that the *gateway* is used to compare access privileges of users through use of a *password* (i.e. login) in which it is compared against registered user accounts to determine grant permissions [see: **column 9 lines 15-54**]. It would have been obvious to one of ordinary skill at the time of the invention to have combined the cited references because logins and/or passwords are well know modes of secured access to systems and encompass proxy/gateway access privilege.

6. Regarding claims 2 and 3, wherein the apparatus further comprises a transceiver ... data in compressed form to said backup server.... [note: Dutta et al. Figures 1 and 2; paragraphs 0022 and 0027].

7. Regarding claim 5, "wherein said hash value is generated by a cryptographic hashing algorithm" [note: Andersen column 16 lines 48-57 hash value to uniquely identify contents for backup storage area].

8. Regarding claim 6, "wherein said cryptographic hashing algorithm is selected from the group of cryptographic hashing algorithms ... [note: Andersen teaches unique identifiers column 16 lines 48-57; while Dutta teaches special protocols may be defined see paragraphs 0023-0024, 0027 and 0031]. It would have been obvious to one of ordinary skill at the time of the invention to have provided a group selection since Dutta teaches special protocols may be implemented this would provide greater flexibility to the end user in terms of tools for locating data.

9. Regarding claim 7, "wherein said hash value is a cryptographic checksum" [note: Andersen column 16 lines 48-57 "the identification 194 may be, for example, a hash value, checksum or other unique identifier"].

10. Regarding claim 8, "wherein the hash value is wirelessly communicated via a communication medium selected from a group consisting of : RF signals, optical signals, audio modulated signals and electromagnetic signals" [note: Dutta et al. teaches wireless transfer of information see abstract; Figure 5; and paragraph 0043].

11. Regarding claim 9 and 10, wherein the programming instructions, when executed, are operative to designate a data type not to backup from the wireless communication apparatus a data location [note: Dutta et al. paragraph 0043 push a content type for backup].

12. The limitations of claims 12-15 and 19 have been addressed above; therefore they are rejected under the same rational.

13. The limitations of claims 17-19 have been addressed above, except for the following, "a computing server apparatus" [note: Dutta et al. Figure 1 server 502, Figures 3, and 5 ; paragraph 0017 a cellular wireless network 112].

14. Claims 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutta et al. US Patent Application Publication No. 2002/0156921 A1 in view of Andersen US Patent 6,865,655 B1.

Regarding claim 11, Dutta et al. teaches "select a previous backup from among a list of backups associated with a user account of a backup server ... receive a hash value for restoration data from said previous backup ... only if said hash value is not identical to any hash value of data currently on the wireless communication apparatus, receive said restoration data from said backup server" [note: Dutta et al. Figures 7 and 8; paragraph 0048; paragraph 0055 reloading backed up data].

Although Dutta et al. teaches the invention substantially as cited above, they do not explicitly teach backup only if data is not already available and that the identifier is a hash value; however they do teach predefined conditions for backup.

Andersen teaches determining if there is a data portion for backup and a mechanism for transferring a contents for backup if the system does not already have a copy. Anderson teaches recognition of the contents through a hash value or other unique identifier that identifies the contents to be evaluated [see: abstract; column 16 lines 48-57 "the identification 194 may be, for example, a hash value, checksum or other unique identifier"]. It would have been obvious to one of ordinary skill at the time of the invention to have combined Andersen with Dutta et al. because identifiers provide access or indexing ability to data for processing, and special identifiers would provide a more enhanced or customized approach to identifying data for storage.

15. The limitations of claim 16 parallel claim 11, therefore it is rejected based on the same rationale.

Response to Arguments

16. Applicant's arguments with respect to claims 1-3, 5-17 and 19 have been considered but are moot in view of the new ground(s) of rejection.

In the response Applicant argued the following:

ARGUMENT: Applicant argues Dutta et al. does not teach the added limitation “facilitate login to a user account at a backup server” or a hash value as an identifier as recited in the amended claims.

RESPONSE: Note newly cited reference Ramasubramani et al. combined with Dutta et al. and Andersen. **Ramasubramani et al.** specifically teaches login process as part of proxy/gateway access privileges, note citations supra.

Dutta et al. provides for the limitation facilitate proxy access (or privileged access) [note: paragraph 0007 wireless device pushes request to client via proxy/gateway server; paragraph 0017-0020 IP network system requests IP address based on uniform resource locator and connects via proxy server 106 or another connection; also note firewall configuration; gateway 114 paragraph 0022; paragraph 0023 wireless application protocol (WAP); and Figure 4]. Anderson et al. teaches a hash value or check sum as a unique fingerprint in backing up data [see: column 3 line 56 through column 4 line 16]. Anderson uses the identifier (i.e. hash) as an indication of weather data is already available to the backup server [see: abstract; column 4 lines 33-53; column 9 lines 19-67; column 16 lines 44 through column 17 line 9; column 16 lines 48-57]. In response to applicant's argument that the references fail to show certain features of applicant's invention, with respect to independent claims 11 and 16, it is noted that the features upon which applicant relies (i.e., a login process) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (571)272-4118. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tony Mahmoudi can be reached on (571)272-4078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greta L. Robinson/
Primary Examiner, Art Unit 2169
June 30, 2009

